

VZCZCXYZ0008
OO RUEHWEB

DE RUEHNC #0126/01 0530818
ZNR UUUUU ZZH
O 220818Z FEB 08
FM AMEMBASSY NICOSIA
TO RUEHC/SECSTATE WASHDC IMMEDIATE 8591
RUCPDOG/USDOC WASHDC IMMEDIATE
INFO RUEHBS/USEU BRUSSELS
RUEHTH/AMEMBASSY ATHENS 3983
RUEHAK/AMEMBASSY ANKARA 5141
RUEHVI/AMEMBASSY VIENNA 0519
RUEHLO/AMEMBASSY LONDON 1355
RUEHRL/AMEMBASSY BERLIN 0734

UNCLAS NICOSIA 000126

SIPDIS

DEPT FOR EB/IPE (JBOGER) AND EUR/SE

DEPT PLS PASS TO USTR (JGROVES)

DOC FOR ITA/MAC/OIPR (CPETERS)

DOC PLS PASS TO USPTO (JURBAN), AND LOC (STEPP)

SENSITIVE

SIPDIS

E.O. 12958: N/A

TAGS: [KIPR](#) [ECON](#) [ETRD](#) [AF](#) [NEA](#) [EUR](#) [EAP](#) [WHA](#) [SA](#) [CY](#)

SUBJECT: CYPRUS: 2008 SPECIAL 301 REVIEW

REFS: (A) STATE 9475, (B) 07 NICOSIA 0153

(U) This cable is sensitive but unclassified. Please treat accordingly.

11. (SBU) Summary and Comment. Further to Ref A request, post submits our input for USTR's 2008 Special 301 review of country IPR practices. (Note: This report covers mainly the government-controlled area of Cyprus. A separate section is devoted to the area administered by Turkish Cypriots, where IPR piracy is more widespread.) In 2007, Cyprus made further progress combating IPR abuses, mainly due to better enforcement by the Police and Customs. Cyprus also strengthened further its legislative framework by adopting legislation to harmonize its legislation with the EU's Directive 29/2005 on Unfair Commercial Practices. Earlier legislative improvements allowing increased penalties for IPR violations have also had the desired effect of discouraging piracy. Nevertheless, counterfeit optical media (particularly DVD piracy through rental shops,) remains a problem, while software piracy remains prevalent.

12. (SBU) Post does not/not recommend including Cyprus on the watch list. The overall IPR situation in the government-controlled has improved slightly compared to previous years thanks to better enforcement. IPR legislation in the area controlled Turkish Cypriots remains antiquated with limited resources or interest in enforcement. Post plans to hold its fourth international IPR seminar in Cyprus (in the government-controlled part as well as in the area administered by Turkish Cypriots) in November 2008. Post encourages participation of USG IPR experts in this workshop.

End Summary and Comment.

Optical Media Piracy

13. (SBU) Cyprus' main IPR problem remains optical media piracy, facilitated in part by advances in computer technology. Motion picture piracy is estimated at 50 percent, and music piracy at 40 percent, although the figures are somewhat dated. Pirate optical discs (CDs, VCDs, and DVDs) are no longer sold at kiosks, although they are still used widely by DVD rental clubs.

14. (SBU) There are approximately 125 DVD rental shops on the island. Only a small percentage of these rent exclusively legitimate product (i.e., original, licensed region 2 disks). Many carry both region 1 and region 2 disks. Multi-region players are readily available. A smaller percentage of shops rent illegally-duplicated disks, most of which have been locally burned on DVD-/R media. During 2007, the combination of more frequent police raids and stricter fines by the courts has helped keep in check the number of pirated products visibly on display at DVD rental shops. There are no indications of domestic, large-scale, organized, mass-production piracy for the export market.

15. (SBU) In December 2006, and after extensive consultations with POVEK (the shop-keepers' union), the GOC implemented new regulations concerning the kinds of items that can be sold by retail establishments including kiosks. This new policy, although not specifically directed against piracy, had an unexpectedly positive impact against piracy as it prohibited kiosks from selling CDs and DVDs, including even legitimate copies. Given the pervasive nature of piracy through kiosks before this new policy, this measure has significantly reduced the availability of pirated CDs and DVDs to the public.

Software Piracy

16. (SBU) The International Intellectual Property Alliance (IIPA) dropped Cyprus from its 2007 Special 301 report to the USTR. The IIPA had included Cyprus in its "special mention" category (one notch below recommending inclusion on the watch list) in its 2006 report, estimating that, in 2005, the rate of business software piracy in Cyprus was 53 percent, causing losses of USD 5.9 million to the industry. These figures reflect an improvement for Cyprus over the long term, given that software piracy was estimated at 77 percent in 1994. However, the rate of software piracy in Cyprus remains somewhat above the current EU average. The most common form of software piracy in Cyprus occurs through local PC retailers, often loading new PCs with unauthorized software copies. Software piracy figures for 2007 are not yet available.

Use/Procurement of Government Software

17. (SBU) The GOC is much more scrupulous than the private sector in abiding by national and international copyright laws for government software. The GOC Department of IT Services (under the Ministry of Finance) issued in 1998 a circular to all government departments expressly forbidding the use of pirated software on GOC machines, subject to administrative action for violators and their supervisors. In January, 2008 the GOC signed an MOU with Microsoft licensing Microsoft operating system and productivity software for all government PCs including those in schools.

Merchandise Piracy

18. (SBU) According to our sources in the field, merchandise piracy has decreased significantly in recent years, largely thanks to aggressive enforcement by the Department of Customs, as well as the police.

Other Forms of Piracy

19. (SBU) Despite Cyprus' adoption of a recent EU directive against online piracy, anecdotal evidence suggests Internet piracy is on the rise, although still below U.S. or EU levels. Furthermore, advances in digital technology are moving piracy onto a totally new level, often requiring more innovative approaches by the authorities. In February 2008, the police dismantled a ring offering illegal TV satellite packages to 547 subscribers. The police came across this new form of crime by chance, while investigating cases of illegal electronic gambling. They were looking for servers transmitting illegal betting games but found that the signal being emitted was that of an illegal satellite TV. The man in charge of the ring legally bought access cards from a satellite TV provider and then shared the access code with his customers at a discount. The police arrested this person and seized a total of nine servers as evidence. It is believed that this is only the tip of the iceberg, with many other such operations still in existence.

110. (SBU) On a different front, college textbook piracy has been

dealt decisive blows over the last couple of years, largely thanks to a recent, high-profile law suit against a copy shop near the University of Cyprus. The confiscation by the police of the shop's copying machines, followed by the successful prosecution in court of the offender sent out a strong message to others. Additionally, the University of Cyprus and other tertiary education institutions have adopted increasingly more stringent policies against textbook piracy over the years.

Legislation

¶11. (U) Cyprus is fully compliant with TRIPS and has modern IPR legislation, which it continues to upgrade, in line with EU requirements. Currently, there are at least several different laws covering IPR issues including a Copyright Law, a Trading Standards Law, and legislation regarding customs and the obligations of importers and the empowerment of the customs authorities. Other minor laws are also used to enforce IPR protection.

¶12. (SBU) The existing array of local IPR legislation was significantly reinforced with the addition of Law 103/2007, which came into effect on December 12, 2007, bringing Cyprus in line with EU Directive 29/2005 on Unfair Commercial Practices. This new law provides stiff administrative penalties (up to Euros 250,000) for traders exhibiting or offering for sale products that mislead consumers. The Ministry of Commerce's Consumer Protection Service, tasked with implementing this law, intends to use it to prosecute, among others, trademark and copyright violators. Significantly, the burden of proof in this legislation, unlike most other laws in Cyprus, rests on the defendant (unless he or she can justify an appeal to the Supreme Court), making enforcement relatively easy. Another welcome innovation that came with this law was that the House approved concurrently a request by the Consumer Protection Service to hire three additional staff members during 2008 to help implement the law.

¶13. (SBU) Other recent laws serving the same purpose included Law 133(I) of 2006, which came into effect on October 20, 2006, concerning products violating IPR. This law helped Cyprus harmonize fully with EU directives 2001/84 and 2004/48 by amending earlier Cypriot legislation. These amendments provided steeper and recurring fines for pirates and introduce a "name and shame" policy for pirates in the Official Gazette. In short, these amendments reinforce the rights of original creators of works of art.

¶14. (SBU) Important amendments to the copyright law were also introduced in 2002, reinforcing the presumption of ownership, particularly in software cases, and facilitating the admission of pirated material as evidence by the court. The amendments also increased maximum penalties for piracy: from two years imprisonment and a fine of CYP 1,500 (USD 3,150) to three years and a fine of CYP 30,000 (or USD 63,000) or more, for second-time offenders. Significantly, this increase in penalties allows the police to raid businesses suspected of being engaged in piracy without having to obtain a search warrant. Over the last two years, the courts have been quite strict about piracy both in terms of definition and penalties.

¶15. (SBU) Similarly, tougher laws on indecent publications have also helped the police crack down on pirated pornographic material (videos and DVD's) available through kiosks etc. Since pirates of pornographic material are also frequently pirating other movies and CDs, the crackdown on the pornography industry has also led to significant seizures of pirated non-pornographic optical discs and videos.

Enforcement

¶16. (SBU) Three different GOC agencies share responsibility for IPR enforcement on Cyprus: the Police, Department of Customs and the Consumer Protection Service (CPS) of the Ministry of Commerce and Industry. Each of the three agencies uses one or several of the laws described above, trying to tackle IPR enforcement from its own perspective. Cooperation among these three agencies is still less than perfect, although it has improved considerably in recent years, with active help from the Embassy (mainly through workshops and seminars).

¶17. (SBU) In general, the Police spearhead the GOC's anti-piracy efforts and their periodic market sweeps for pirated products have effectively reduced the amount and incidence of illegal material. Similarly, Customs has shown a renewed interest in enforcement since May 1, 2004 due to legislative changes providing Customs with enhanced enforcement tools. The Consumer Protection Service, until recently a laggard in IPR enforcement, now promises to take a more active stance following the recent approval of the law on Unfair Commercial Practices (see above).

Police Lead the Pack Against Piracy

¶18. (SBU) The police have made good use of the evidence law, passed in February 2004. This law grants Cypriot judges discretionary authority to admit hearsay and electronic reproductions as evidence in trials. These changes facilitate prosecution of IPR cases by the Police. Active press coverage of greater police involvement and increased prosecutions has also somewhat helped deter new parties from entering the pirated goods market.

¶19. (SBU) In November 2004, the Police formed a dedicated unit specializing in IPR enforcement. With help from this unit, the police stepped up the number of raids on suspected pirates to 188 in 2007, from 114 in 2006. The total number of seizures from these raids (mostly DVDs and CDs) also rose to 188,516 in 2006 from 77,763 items in 2006. Retailers now appear more reluctant to display pirated products in kiosks or elsewhere in the marketplace.

Customs Cracks Down on Imported Pirated Merchandise

¶20. (SBU) The Department of Customs has also been more successful in combating IPR piracy in recent years. Cyprus' EU accession has allowed the Department of Customs to divert resources from its traditional work at Cypriot ports of entry (which has diminished considerably, since most trade is conducted within the EU) to new areas such as better IPR enforcement.

¶21. (SBU) Customs has also made good use of legislation adopted in 2002 granting it enhanced authority to detain (for up to three days) goods or products suspected of being counterfeit until the true identity of the IPR holder is established. Detentions by Customs of counterfeit goods have risen significantly following this increased authority. Customs also credits U.S.-provided non-proliferation training and equipment with improving Customs ability to interdict counterfeit goods. Customs now audits retail shops to identify imported counterfeit merchandise that has slipped through the port of entry. Customs then traces the supply chain back to the importer for possible action. Customs also uses this information to improve its screening system. To overcome weaknesses in the evidence law that often prevented Customs from pursuing a case within the three-day detention period, Customs arranged with the Ministry of Commerce to seize the counterfeit goods under its administrative detention authority. This innovative approach has prevented the release of the goods into retail channels.

¶22. (SBU) In 2007, Customs conducted dozens of raids, seizing thousands of pirated merchandise. The total value of these seizures reached USD 155,868, compared with USD 696,370 in 2006. (In 2006, about 60 percent of the seizures in terms of value comprised counterfeit cigarettes, seized in just two raids. In 2007, there were no significant cigarette seizures.) Seizure items included mainly cheap imitations of well-known brands of merchandise (e.g. clothing, towels, shoes, bags, wallets, perfumes, and sunglasses) and smaller quantities of pirated optical and audio material. Most of the seized goods originated from the Far East (Hong Kong and China), while smaller numbers came from Lebanon, Greece, Russia, and the United States.

High Hopes for Consumer Protection Service

¶23. (SBU) Armed with both the new law described above (Unfair Commercial Practices law) and a new Director (appointed in 2006), the Ministry of Commerce's Consumer Protection Service promises to pull its weight in the fight against piracy. Post will follow up with the Service to ensure it stays on track to hire the additional staff and implement the new law.

Impact of Piracy

¶24. (SBU) It is difficult to measure the actual impact of piracy and counterfeit goods on legitimate businesses but, at least, the trends in the legitimate market seem reassuring. For example, in the cinema business, the following numbers tell the story: total cinema ticket sales have gone from 840,000 in 2005, to 801,000 in 2006, to 849,000 in 2007. About six new theater screens came on line in 2007, mostly in multi-screen complexes, although several smaller theaters were forced to shut down. There are now 34 modern cinema screens on the island, compared to 40-45 in 2002 (although only 12 existed in 1992). Of the 34 screens, 22 belong to the same operator. In other words, cinema attendance has been growing slowly, and we have witnessed considerable consolidation in the cinema business, with multi-screen complexes on the rise elbowing small theaters out of the market. Similarly, licensed goods merchandisers are reporting steadily increasing sales of their merchandise over the last two years as a result of the effective interdiction of counterfeit goods by Customs.

Area Administered by Turkish Cypriots

¶25. (SBU) The IPR situation in the area of Cyprus administered by Turkish Cypriots (i.e., the self-declared "Turkish Republic of Northern Cyprus," which is only recognized by Turkey) is, in general, far worse than in the government-controlled area. IPR legislation is antiquated (for example, the basic copyright law is based on the 1911 Imperial Copyright Law, without any amendments whatsoever in recent years) and the authorities have shown little or no initiative in combating piracy. In November 2005 and March 2007, the Embassy sponsored IPR workshops in the north with support from the Turkish Cypriot Chamber of Commerce. Unfortunately, these efforts have failed to produce the desired result. After the 2005 workshop, The Turkish Cypriot authorities committed to drafting modern, EU-compatible, IPR-related legislation, and Turkish officials were invited to stage an IPR training program. The Turkish Cypriot authorities, however, have identified the adoption of other needed legislation (e.g. on money laundering and casinos) as greater priorities, and little progress has been made on new IPR laws to date.

¶26. (SBU) DVD and audio media piracy is almost universal (often victimizing Turkish artists). Most pirated CD and DVD copies are imported from Turkey - although some shops openly burn CDs and DVDs on demand. Merchandise piracy is also rife. Counterfeit apparel, shoes, and luggage are freely available. Software piracy is estimated at over 90 percent and even the "government" uses pirated software. College textbook piracy is also the norm in north Cyprus' thriving tertiary education community. Finally, several local television stations continue broadcasting recent television and movie releases without permission, although the problem reportedly decreased during 2007 due to protests by cinema owners.

¶27. (SBU) Although dated, a law concerning counterfeit products (dubbed the "Passing Off" legislation, based on the Civil Wrongs Law under British Common Law) has been used in recent years to prosecute merchandize pirates in the area administered by Turkish Cypriots. Such cases include counterfeit cigarettes, tea, and beer. The law prevents pirates from using similar-sounding names or identical logos to promote their products.

¶28. (SBU) There have been no recent court cases involving optical media. Post is aware of only one case to date involving optical media piracy being brought to court. This was several years ago when the legitimate IPR holders for the movie "Titanic" obtained an injunction forbidding local TV stations to broadcast the movie prior to its release on the big screen, using another law concerning publications. The pirates "mistake" in this case (which they have not repeated since) was that they advertised the release several months ahead.

Comment

¶29. (SBU) Post does not/not recommend listing Cyprus (the government-controlled area) in this year's Special 301 review. We did not list Cyprus in 2006 and in 2007 IPR enforcement improved. We are also unaware of any international professional associations recommending Cyprus' listing. Admittedly, IPR piracy in the northern part of the island is much worse but, given current

political realities, it would be very hard to list this part of Cyprus (not recognized by the USG) under the Special 301 review as a separate entity.

¶30. (SBU) Post continues to advocate better education and awareness. In this vein, Post plans to organize, once again, separate IPR workshops in both parts of the island in November 2008.

Post also welcomes increased training opportunities for GOC IPR officials, whether in the United States or in Cyprus. Experience has shown that the GOC will not take advantage of training opportunities unless fully funded by outside sources. End comment.

SCHLICHER